

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 993 of 2006****For Approval and Signature:****HONOURABLE MR.JUSTICE J.R.VORA****HON'BLE SMT. JUSTICE ABHILASHA KUMARI**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT**Versus****VISHANBEN, W/O. CHHATARAMBHAI SINDHI (LUVANA)**

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Appearance :

MR KC SHAH APP for Appellant

MS SJ SHEIKH for Respondent

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA**and****HON'BLE SMT. JUSTICE ABHILASHA KUMARI****Date : 20/09/2007**

ORAL JUDGMENT : (Per : HONOURABLE MR. JUSTICE J.R.VORA)

1 Instant Appeal is preferred by the State under Section 378 of the Criminal Procedure Code against the judgment and order delivered by Additional Sessions Judge, Fast Court No. 8, Morbi, in Sessions Case No. 58 of 1999, whereby present respondent, being accused of Sessions Case, came to be acquitted by the Trial Court, for the charges levelled against her under Section 498-A and 306 of the Indian Penal Code.

2 Leave to Appeal granted. Appeal is Admitted. Learned Advocate Ms. S.J. Sheikh waives for respondent.

3 Learned APP Mr. K.C. Shah for the State and learned Advocate Ms. S.J. Sheikh for the respondent were heard. Upon request of learned counsels for the appellant and respondent, matter is taken up for final hearing. We have called for the Record and Proceedings from the Trial Court and learned Advocates have assisted this Court with extra copies of the evidence recorded during trial and copies of the documents produced.

4 Deceased Laxmiben was married to Nandlal, son of present

respondent, and both of them were staying in the area known as Visipara at Morbi town. According to prosecution case, present respondent, being mother-in-law of the deceased, used to taunt deceased Laxmiben frequently and was unnecessary scolding her and thereby executing mental cruelty upon Laxmiben. Because of this cruelty, on emotional excitement, on 8th of December, 1999, at about 3.00 p.m., she poured kerosene upon her and ignited her by a match stick. She was seriously burnt and was taken to Morbi Civil Hospital. Medical Officer Dr. M.A. Sanghvi informed Morbi City Police Station telephonically that one Laxmiben, wife of Nandlal Chhatarambhai, had burnt herself pouring kerosene and was admitted to hospital for treatment. The information was recorded at Morbi City Police Station vide Entry No. 21 of 1999 and inquiry was entrusted to A.S.I., Jasubha Nagubha Jadeja, examined as PW-7. He visited the hospital and recorded a complaint as offered by deceased Laxmiben at about 16.40 hours. The said complaint is produced on record at Exhibit-28. In the complaint, deceased stated that for household work, her mother-in-law, present respondent, used to scold her frequently and was mentally harassing her. Therefore, on emotional excitement, she poured kerosene upon her and ignited her by match stick. She came out of her house shouting. Rameshbhai, younger brother of husband of the deceased and his wife Jaishriben wrapped quilts and attempted to

save the deceased. The complaint was registered before Morbi City Police Station vide Crime Register No. I-308 of 1999 for the charges under Section 498-A against the respondent. Thereafter during investigation in pursuance of a Yadi at Exhibit-30, Taluka Executive Magistrate, PW-8 Maganlal Amarsibhai Surani, visited hospital on 8th of September, 1999 at about 17.00 hours, recorded dying declaration of Laxmiben, which he placed on record at Exhibit – 31. In the said dying declaration, the deceased reiterated the story which was stated by her in complaint. During treatment, Laxmiben died on 12.9.1999 and, therefore, a charge was added against the respondent under Section 306 of the Indian Penal Code. Investigation was handed over to one Bhimjibhai Alabhai Khabhalia, P.I., Morbi City. After investigation, charge sheet was submitted against the respondent by P.I. Shri B.P. Jadeja in the Court of Judicial Magistrate, First Class, at Morbi. The charge sheet was registered as a Criminal Case and said case thereafter was committed to the Court of Sessions and was registered as Sessions Case No. 58 of 1999. The learned Additional Sessions Judge, Morbi, to whom the case was made over for trial, framed charge against the respondent on 18th of June, 2004 at Exhibit-1, and on reading over the charge to the respondent, she pleaded not guilty. The prosecution, therefore, examined eight witnesses and produced on record documentary evidence to prove its case. On evidence of the prosecution

being over, a statement of the respondent was recorded by learned Trial Judge under Section 313 of the Code of Civil Procedure wherein the defence of the respondent was that a false case was filed against her and she denied in toto the case of the prosecution. The learned Trial Judge thereafter heard the prosecution and defence and came to the above conclusion and, hence, this Appeal.

5 Learned APP Mr. K.C. Shah on behalf of the State submitted that though parents of the deceased have not supported the prosecution case so far as the allegation of cruelty is concerned, but, however, through First Information Report of the deceased, placed at Exhibit-28 and dying declaration recorded by the Executive Magistrate, PW-8, which is placed on record at Exhibit – 31, it has been established beyond doubt that Laxmiben committed suicide on account of mental harassment executed by the present respondent, who happened to be mother-in-law of the deceased. It is submitted that though Exhibit-31 was not signed by the deceased, at least, in support of oral dying declaration of the deceased to the Executive Magistrate, the document can be considered as a corroborative piece of evidence. While in complaint at Exhibit-28 which is amply proved by PW-7 ASI, Jadeja, it is undoubtedly established that Laxmiben committed suicide because of mental harassment by the present respondent. Learned APP

submitted that though there was sufficient evidence to convict the accused, learned Trial Judge has not properly appreciated this evidence and acquitted the respondent. It is, therefore, urged that the Appeal be allowed.

6 Learned Advocate Ms. S.J. Sheikh on behalf of the respondent submitted that even if the evidence of complaint at Exhibit – 28 is considered to be dying declaration and even if Exhibit–31 is considered to be oral dying declaration, there is no evidence of cruelty committed by the respondent as envisaged and defined by Section 498-A of the Indian Penal Code. It is submitted that there is no evidence at all on record that the respondent directly or indirectly abetted in committing of suicide by deceased Laxmiben and, hence, the charge under Section 306 of the Indian Penal Code could not be proved by the prosecution. It is submitted that this is an Appeal against the order of acquittal and reasons assigned by the Trial Judge for acquittal are sound and the conclusion arrived at is proper and possible. It is submitted that the order of acquittal passed by the Trial Court cannot be interfered with lightly. It is urged that the Appeal deserves to be dismissed.

7 We have undertaken thorough scrutiny of the evidence

recorded by the Trial Court during the trial to ascertain whether the appreciation of evidence by the Trial Court is proper and the conclusions reached are sustainable. We have taken into consideration the vital features of the matter and the reasonable probabilities arising out of the circumstance of the case. We have gone through each corner of the Record and Proceedings of the Trial Court and have scanned particularly the reasons assigned by the Trial Judge for the acquittal.

8 Assessing the evidence of the prosecution, PW-1 Nathalal Narandas, examined at Exhibit – 12, father of the deceased Laxmiben stated that according to his information, Laxmiben had caught fire while she was cooking. According to the witness, Laxmiben had never made any grievance against the respondent whenever she had visited his house. He was declared hostile by the prosecution. PW-2 Sitaben Nathalal, examined at Exhibit–13 is mother of the deceased and she also stated that deceased was happy with her in-laws and she never made any grievance about her married life. She deposed her ignorance whether there was any harassment to Laxmiben by the respondent. In cross-examination by defence, she stated that Laxmiben and her husband was staying separately from in-laws. She admitted that a compromise had arrived at between them and the respondent, but she denied that on account of that compromise, she had turned hostile.

PW-3 Jusabbhai Ismailbhai Musa, examined at Exhibit – 15, is panch of panchnama at Exhibit – 16 of scene of offence. This witness did not support the prosecution case and stated that the police had obtained his signature on Exhibit – 16 and except that he did not know anything.

PW-4 Jusabbhai Ayubbbhai Miyana, examined at Exhibit – 17, is panch witness of panchnama at Exhibit-18. By this panchnama, respondent was arrested. However, this witness did not support the prosecution case or the panchnama, in any manner.

PW-5 Farojsha Hasansha Samdar, examined at Exhibit-20, is second panch of panchnama at Exhibit – 16 of scene of offence. This panch also did not support the prosecution case. Inquest panchnama is placed on record at Exhibit – 21.

PW-6 Bhimjibhai Alabhai Khambalia, examined at Exhibit – 22, was serving as PI at Morbi City Police Station around 12th of September, 1999. Investigation of the crime was handed over to him on 12th of September, 1999 by ASI Jadeja at about 14.30 hours. During treatment on 12th of September, 1999, according to this witness, deceased Laxmiben died and, therefore, he prepared the inquest panchnama. He added charge under Section 306 of the Indian Penal Code and after postmortem, dead body of Laxmiben was entrusted to her father Nathalal Narandas. Thereafter accused was arrested by him and according to him thereafter PI Mr. B.V. Jadeja submitted a charge sheet. He produced on record police station diary Entry at Exhibits 22, 23, 24 and 25 about

information received from the hospital that Laxmiben, who was in treatment, had died. PW-7 Jasubha Nagubha Jadeja, examined at Exhibit – 27, stated that on 8th of September, 1999, he was serving as ASI at Morbi City Police Station. At about 14.15 hours, he was entrusted the inquiry in respect of Entry No. 21 of 1999 pertaining to Laxmiben. He visited the hospital and recorded the complaint of Laxmiben. He proved the contents of the complaint given by Laxmiben at Exhibit – 28 wherein she stated that her husband was serving at Green Hotel and her mother-in-law was frequently scolding her for household work and she was treated with mental cruelty. Therefore, in excitement, she poured kerosene upon herself and ignited her. In his examination in cross, the defence asked that, who identified the thumb impression of deceased Laxmiben. The witness stated that one Ajitsinh Umedsinh identified the thumb impression of the deceased. The witness further stated that when he recorded the complaint, three/four family members of the deceased were present in the hospital. He denied that the complaint was offered by relative of the deceased. PW-8 Maganlal Amarsibhai Surani, examined at Exhibit – 29, stated that on 8th of September, 1999, he was serving as Mamlatdar at Morbi. He received a Yadi, which he produced at Exhibit–13 from Morbi City Police Station to record dying declaration of Laxmiben, in pursuance of Entry No. 21 of 1999. He, therefore, visited Morbi Civil Hospital and met

with Doctor on duty. The Doctor indicated where the patient was. The Doctor endorsed that the patient was conscious and was in a position to offer dying declaration. According to witness, thereafter, he came to the ward and near the patient and requested other relatives to leave the patient alone. The witness stated that he then introduced himself to the patient and he inquired whether the patient was able to offer dying declaration. The witness stated that Laxmiben was ready and prepared to give dying declaration. According to witness, Laxmiben stated her name was Laxmiben and her husband's name was Nandlal Sindhi. They were staying at Kulinagar at Morbi. She stated that she and her husband had resided separately. She had one daughter, aged about two years. She stated that she was brought to the hospital because she was burnt. According to the witness, when Laxmiben was asked about how she got burnt injuries, she stated that, in the afternoon when she was in her house and her husband was also there. Before her husband had gone out for job, her mother-in-law had come and quarrelled with her. Thereafter her husband had gone out and her mother-in-law also went out of her house. Thereafter in excitement she poured kerosene upon her and ignited her. She came running out of her house and Rameshbhai, younger brother of her husband and Jaishriben, wife of Rameshbhai, tried to save her by wrapping quilts. The witness produced this dying declaration at Exhibit-31. In cross-

examination by defence, the witness admitted that he has not taken the signature or thumb impression of the deceased on dying declaration. He stated that he obtained endorsement of the Doctor on dying declaration after dying declaration was over. He denied the allegation that he had recorded the dying declaration as per the instructions of relatives of deceased Laxmiben.

9 P.M. Report of the deceased was placed on record at Exhibit-6 and accordingly deceased died on account of shock due to septicemia due to extensive burns.

10 This is all the evidence of the prosecution.

11 The learned Trial Judge from the above evidence came to the conclusion that dying declaration was not signed by the deceased. The learned Trial Judge, therefore, did not place any reliance on the dying declaration at Exhibit- 31 after relying upon the decision of the Apex Court in the matter of MANIRAM vs. STATE OF MADHYA PRADESH, as reported at AIR 1994 SC 840, but learned Trial Judge placed reliance on the complaint at Exhibit-28. According to learned Trial Judge, there was no other evidence of cruelty, etc. except Exhibit – 28 complaint offered by the deceased before PW-7 Jasubha

Nagubha Jadeja. According to learned Trial Judge if the contents of Exhibit-28 were to be taken into consideration, whatever deceased stated, was in respect of impulsive act on the part of deceased and cruelty as envisaged by Section 498-A of the Indian Penal Code could not be established by the prosecution through this statement nor positive role of the respondent could be established by the prosecution through the statement of the deceased vide Exhibit-28 as to abatement by respondent in committing suicide by deceased. Learned Trial Judge came to the conclusion that, at the most, what is stated by the deceased in Exhibit-28 amounts to a stray act on the part of the respondent as the respondent used to scold the deceased frequently for household work. This would not amount to cruelty as defined under Section 498-A of the Indian Penal Code. The learned Trial Judge relied upon a decision of this Court in the matter of STATE OF GUJARAT vs. SUNILKUMAR KANAIYALAL JANI, as reported in 1996 (2) GLR 797. Learned Trial Judge further took into consideration that respondent and deceased and her husband were residing separately. Parents of deceased deposed before the court that there was no grievance expressed to them by the deceased about married life and if on account of stray incident due to emotional excitement deceased committed suicide, that cannot be termed as cruelty and abatement as defined under Sections 498-A and 306 of the Indian Penal Code and, hence,

learned Trial Judge acquitted the accused.

12 When we re-appreciated the evidence recorded during trial to assess the reasons assigned by the Trial Judge, we also come to the conclusion from the facts and circumstances of the case that only evidence available to prove the charge against the respondent was in the shape of the complaint at Exhibit-28, which could be considered as dying declaration. Even if Exhibit-31, a statement recorded before the Executive Magistrate, is considered to be a dying declaration, which was not signed, what is revealed through this statement is nothing but a fact of stray act on the part of respondent to scold once the deceased about the household work. Nothing beyond this, anything is proved. It must be shown before charge under Section 498-A is proved that deceased was subjected to such harassment, which amounted to unbearable, continuous, repeated, persistent unprovoked vexatious behaviour, which can be termed as cruelty. Cruelty, as envisaged by the definition of Section 498-A, implies harsh and harmful conduct of certain intensity and persistence, which leaves the victim in physical as well as mental agony and torture. Unless and until, it is proved that the deceased was treated with such cruelty and unless and until it is established that such cruelty was to the extent to compel the victim to commit suicide in any manner leaving no option for the victim but to

commit suicide, no offence under Section 306 of the Indian Penal Code is made out with the aid of Section 107 of the Indian Penal Code. Therefore, if the prosecution case is taken on its face value, and if it is considered that what is stated by the deceased in Exhibit – 28 and in Exhibits–31 are proved by prosecution, then also, the offence of cruelty and abatement in committing suicide could not be made out by the prosecution beyond reasonable doubt, as afore stated. The Trial Judge rightly observed that the stray incident in normal life of scolding victim by a mother-in-law, an elder of the family, for household work would not amount to cruelty and abatement in committing suicide. What is established from the statement of the deceased is that, the deceased being emotional, impulsive and touchy, took this stray incident very seriously and committed suicide. The element of insistence and persistence and compulsion as envisaged by law is altogether absent in what is stated by Laxmiben in her statement. In this view of matter, the reasons assigned by the Trial Judge for acquittal are proper, plausible and possible. This being an Appeal against the acquittal, even if the second view is possible, unless and until the reasons assigned by the Trail Judge for acquittal are found perverse, no interference is permitted. Therefore, the judgment and order impugned in this appeal warrants no interference.

13 For the above reasons, the Appeal stands dismissed.

(J. R. VORA, J.)

(SMT. ABHILASHA KUMARI, J.)

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